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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,336

08/21/2003

John W.L. Ogilvie

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11/17/2008

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EXAMINER

PATEL, JAGDISH

ART UNIT

PAPER NUMBER

3693

MAIL DATE

DELIVERY MODE

11/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/645,336

Applicant(s)

OGILVIE, JOHN W.L.

Examiner

JAGDISH N. PATEL

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 71, 74, 75 and 77-91 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 71, 74-75 and 77-91 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to amendment filed 10/10/08.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/10/08 has been entered.

Response to Amendment

3. Claims 71, 74, 75, 79-82 have been amended. Claims 72-73 and 76 is cancelled. New claims 83-91 have been added.

Response to Arguments

4. Applicant's arguments, see REMARKS/ARGUMENTS on pp 8-12, filed 10/10/08, with respect to rejection of claims 71-82 over Burke patent have been fully considered and are persuasive. The rejection of claims 71-82 has been withdrawn.

5. However, certain deficiencies have been noted as presented herein, that render the new claims unclear and indefinite. The new claims have been rejected under 35 USC 112(second) as explained below.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 71, 74-75 and 77-91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 71 is indefinite because the claim fails to provide structural and functional relationship between the computing device via which the savings agreement was entered into and the merchant computer where information concerning the consumer-initiated transaction is received. The claims are therefore incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. See full explanation below.

It is unclear what steps are performed by the computing device and the merchant computer system respectively when the process specifies that the entering into a savings agreement and receiving information steps use the language "via". One cannot ascertain what process is performed is performed by the respective apparatus.

Is the computing device associated with the financial institution and store the information concerning the savings agreement?

What process is actually performed by the merchant computer system? Where determination is made that a consumer-initiated transaction is pursuant to the saving agreement before the receiving step can be performed?

For example, entering into savings agreement via a computing device has a very minimal role that the savings agreement is incorporated in the computer memory. Like wise receiving information via a merchant computer system does not clearly lend to its role in terms what it does.

The step of "receiving information" fails to clearly recite the origin of the consumer-initiated being investigated for determining that a consumer transaction is pursuant to the savings agreement. This step improperly connects the term "consumer-initiated transaction" by giving improper antecedent basis.

It appears that the claim has a missing process or a gap between the entering and receiving steps, no functional link is provided between the computing device where (presumably) the savings agreement is stored and the merchant computer where information where information related to a consumer-initiated transaction is received. The examiner proposes the following steps after the entering step:

(Specify that the computing device is associated with the financial institution and specify that the merchant computer system is linked to the computer device in order to communicate terms and conditions)

----receiving at a merchant computer information concerning the savings agreement from the financial institution via the computing device; and

----receiving at a merchant computer information concerning a consumer-initiated transaction for purchasing goods or services.

New independent claim 83 also contain similar defects since not functional communication link is recited between the computing device and the creditor computing system as pointed out in claim 71 analysis.

Appropriate corrections are required.

Allowable Subject Matter

8. Claims 71, 74-75 and 77-91 allowed subject to resolution of the 112(second) rejection cited above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-630PM Mon-Tue and Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **KRAMER JAMES A** can be reached on **(571)272-6783**. The fax phone

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number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/JAGDISH N PATEL/
Primary Examiner, Art Unit 3693